

ADEPT
Legal Commentaries

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Despite the current political crisis, Parliaments' spring session has been quite efficient. In the absence of the Christian-democrats the Parliament majority continues the examination of the drafts included in the agenda. During this time period only one Parliament plenary session was held to examine several draft laws of special importance.

Legislative acts adopted in the final reading

- I. Law on Ratification of the Treaty on collaboration of Community of Independent States (CIS) member states in fighting illegal migration.

ADEPT comment: This document illustrates CIS member states concern about the extent of organized crime and its development tendencies. A series of criminal groupings have managed to establish networks used for illegal migration both of CIS citizens, and immigrants from conflict regions, and those affected by natural calamities and social-economic cataclysms. Via this Agreement, CIS Member States protect their citizens on the one hand, and on the other set barriers for illegal migration from one country to another.

The Agreement includes a series of provisions regarding:

- Definitions of the terms (illegal immigrants; third count; exit and entry, etc);
- Priorities of collaboration between parties (immigration control; citizens' records; illegal immigrants' deportation, exchange of information, etc.).

- II. Treaty on collaboration of CIS member states in fighting computer information crime.

ADEPT comment: The treaty regulates:

- Basic notions and principles;
- Computer information crimes;
- Relevant bodies (Ministry of Justice; General Prosecution; Information and Security Service; Department of Informational Technologies, etc.) designated to cooperate in view of implementing the Treaty provisions;
- Issues pertaining to information confidentiality;
- Settlement of would-be conflicts between members states etc.

- III. Law on Modification of Article 15 of the Law on Housing Privatization.

ADEPT comment: At the initiative of the President of the Republic of Moldova the Law was amended so as to avoid cases when under aged are deprived of their housing. The law stipulates that the housing may be sold after privatization (when under aged are involved) only upon tutorial consent.

Legislative acts adopted in the first reading

- I. Draft law on Prosecution.

ADEPT comment: The process of elaborating the Statute of the Republic of Moldova's Prosecution was very deceitful. Prosecution reform was one of Republic of Moldova's engagements for adhering to the Council of Europe. So far, the only step towards the reform was the adoption in 2002 of amendments to the Constitution of the Republic of Moldova, providing that Prosecution no longer has to oversee everything and everybody, from associations' functioning to opening criminal records.

The draft law submitted by a group of deputies in Parliament was developed by the General Prosecution, and was debated upon during several domestic and international seminars, as well as by Coordinating Council for implementing judiciary and legal reforms.

It is worth mentioning some of the most relevant amendments:

1. Prosecution is a branch of judiciary; independent from local government, formed based on the principles of legality, impartiality and hierarchical control.
2. The following are some of the Prosecution main responsibilities:
 - To represent general interests of the society, to defend rule of law, citizens' rights and freedoms;
 - To institute proceedings and oversee legal bodies exercising them;
 - To represent state prosecution in court;
 - To verify the detention's legality;
 - To oversee law observance by the Military, etc.

Article 5 of the Law stipulates Prosecutor's mandate and his/her responsibilities.

Articles 6-8 specify the acts, which a Prosecutor may issue (petitions, writ of summons, ruling orders, and civil action).

Chapter III of the law establishes the Prosecution structure, its organization and functioning. The draft law preserves the provision providing that the Parliament designates the Prosecutor and his/her deputies. The General Prosecutor gives an oath and may not hold his/her position for more than 2 consecutive constitutional terms (a total of 10 years).

Articles 28-30 specify judges' motivation and sanctioning procedures, whereas Articles 31 and 32 ousting and resignation of the prosecutor. Noteworthy, the draft law preserves a series of prosecutors' inviolabilities and immunities, especially with regard to their suspension and ousting, fact that generated controversial debates in Parliament.

Article 36 establishes special conditions for the prosecutor's retirement at the age of 50, provided he/she has worked at least 20 years, out of which 12.5 as a prosecutor or a judge.

The draft also preserves the provision compelling local public administration bodies to provide housing to the prosecutor, however when debated in Parliament there were several opinions that the provision should be excluded.

The adoption of the amended draft law on prosecution will be a significant event in the judicial reform. However in its current wording the draft law does not differ essentially from the enforced law and it needs to be considerably improved.

Furthermore, it is worth mentioning that in the nearest future the Parliament will examine the new draft laws on the lawyers and on the notary, which generated a lot of controversial debates in the society in the last 3 years.

II. Law on the modification and completion of legislative acts related to judge statute.

ADEPT comment: The amendments and completions:

- Establish new requirements for becoming a judge.
- Define as infringement the failure of the Court Chairman or his/her Deputy to ensure the court's well functioning.
- Establish that the Court Chairperson or his/her Deputy is ousted upon completion of the term he/she was appointed for.
- Provide procedure for recalculating pensions and indemnities paid to the retired judges.
- Provide that pensions and indemnities for the judges, who worked in international courts, are established based on the average salary of the Supreme Court of Justice judge. The grounds for this modification are the fact that Judges at the European Court have a very high salary. If their pensions were calculated accordingly, this would be a burden for the meager state budget. In addition, domestic judges will be discriminated.
- Stipulate that in the future, indemnities due to deceased judges will be paid, if the latter died while exercising his functions.

III. Draft law on modification of the Law on Financial Institutions.

ADEPT comment: The new wording of the law excludes letter a) of the paragraph 7 of the Article 38, which provides that the National Bank will have to execute court ruling, if its decisions are found as illegal by the Court. The current wording is as follows "a) if the Court finds that National Bank actions in relation to another

bank are groundless, National Bank will take actions for legal redress, however authorization canceling will remain in force".

Noteworthy the provision being amended was introduced in 2001 and when examined in Parliament several experts pointed out that such a provision was inadmissible. We could only praise the Parliament for repairing its mistake. Unfortunately, if it had taken into consideration experts' opinions the mistake would have never occurred.